

**Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment
Bill 2015**

Clause 3 - Amendment of pt 2, div 1A, hdg (Point of sale at a retail outlet)

Part 2, division 1A, heading—

omit, insert—

Division 1A Particular restrictions on sales by suppliers

The definition of the term “point of sale” needs to be clarified so as to provide a clear direction in the intent of the Act in restricting the number of sale locations.

At present the Act defines point of sale as “a place where there is a counter or similar fixture where smoking products are sold within a retail outlet, but does not include a tobacco product vending machine”.

The definition was introduced into the Act in 2001 when it was permissible to have multiple points of sale. For example, individual cash registers at a supermarket or two cash registers at a newsagency. The term was introduced to define an area at which signage had to be located, however amendments to the Act now only permit the sale of smoking products from one point of sale.

The main issue is that the definition of point of sale states “a place where there is a counter or similar fixture”. Counter is mentioned in the singular and therefore may be considered as only permitting one counter however all that is required is that a counter or similar fixture be present. There is nothing that restricts the numbers of counters. Therefore having two or more counters still fulfils the requirement to have a counter as long as the counters are considered to be at a place. This could lead to numerous or extended counter areas, with several registers being available for the sale of smoking products.

If the intent of the Act is to restrict the sale of smoking products to one particular point of sale (one cash register only), the term needs to be restricted to one item used to conduct the sale, i.e. one cash register. If the intent was to restrict the sale to just one counter, the definition should read as “a counter or similar fixture” not “a place where there is a counter or similar fixture”.

Clause 4 - Insertion of new ss 13C and 13D

Part 2, division 1A—

insert—

13C Supplier must not sell smoking products from vehicle

(1) A supplier must not sell smoking products from a vehicle.

Maximum penalty—40 penalty units.

(2) In this section—

vehicle includes a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.

In its current form this section would also capture vehicles such as pie vans and smoko vans, some of which sell smoking products. Vehicles such as these may be seen as an easy source of smoking product supplies to minors.

To assist Officers in the enforcement of this provision it is suggested that amendments be made to Div 2 of the Act (Powers of Authorised Persons). At present an authorised person does not have any power to stop a vehicle, as is common in other public health legislations administered by environmental health officers (Food, Pest Management, Health, Public Health and Radiation Safety Acts).

The ability to stop vehicles will also assist in the enforcement of section 26VB which prohibits smoking in work vehicles when the vehicle is being used for business purpose and another person is present. It may also be possible to extend the administration of section 26VC to other classes of authorised persons. Section 26VC prohibits any person smoking in a vehicle containing a person under the age of 16. At present this section is only administered by the Queensland Police Service.

13D Supplier must not sell smoking products from pop-up store

(1) A supplier must not sell smoking products from a pop-up store.

Maximum penalty—40 penalty units.

(2) In this section—

pop-up store means—

(a) a temporary stall or counter; or

(b) a retail outlet where smoking products are available for sale only during a public event.

public event includes a concert, fete, festival, show or sporting event.

Section 13 C & D will be contained within part 2 division 1 of the Act (Suppliers and Employees). Section 8 states that division 1 does not apply to the supply of smoking products from a coin operated vending machine. Section 15(2) allows a vending machine to be used in the bar area of licensed premises as long as it can be easily seen by bar staff. Therefore the supply of smoking products at concerts, fetes, shows or sporting events may still be afforded from a vending machine within the bar area of a licensed premises.

If the total prohibition of smoking product sales is desired at concerts, fetes, festivals, shows etc, it is recommended that amendments be made to section 15 to exclude the aforementioned events from having a tobacco product vending machine available.

In relation to the location of tobacco product vending machines a recent trend seems to be for suppliers of the tobacco product vending machines advising liquor licence holders of inappropriate locations for placing the vending machines, for example within a bottle shop attached to a commercial hotel. Consideration should be given to making it an offence for tobacco product vending machine suppliers to knowingly advise or permit a tobacco product vending machine to be located in an unpermitted area.

Clause 5 - Insertion of new pt 2C, div 2B

Part 2C—
insert—

Division 2B Government buildings 26ZGG Person must not smoke near particular government buildings

(1) A person must not smoke on land within 5m of a government building that has both of the following types of signage, on the outside of the building, at or near a public entrance to the building—

(a) signage identifying the building as a government building;

Examples for paragraph (a)—

- A sign indicating a department is situated in the building.
- The coat of arms of the State is prominently displayed on the building.

(b) a no smoking sign.

Maximum penalty—20 penalty units.

Some clarification of the term building may be required. In particular, does building include attachments such as awnings, walkway, undercover driveways etc.

(2) Subsection (1) does not apply to—

(a) a person on land that is not a public place; or

(b) a person in a motor vehicle passing the building.

(3) In this section—

government building—

(a) means—

(i) a building in which the majority of space is leased or occupied by a department or part of a department; or

(ii) a building in which a court or tribunal is situated; or

(iii) a building in which the Legislative Assembly is situated; or

(iv) a building, prescribed by regulation, in which a public sector unit is situated; but

(b) does not include a building on health facility land or school land.

health facility land see section 26ZGB.

no smoking sign means a sign indicating that smoking is not permitted.

school land see section 26ZGB.

As written, the intent of this part appears to prohibit the public from smoking within 5m of a government building however it permits persons (government employees or guests/ visitors) to access non public areas to smoke within 5m of government buildings providing it is not a public access area. This may be considered to be double standards in the eyes of the public and does not set a very good example of Government leading the way. The exemption of health service and school buildings

from this part further highlight double standards. For example an employee at a school has to be further than 5m from the school boundary to smoke where as an employee of parliament house can be on the property as long as they are not within 4m of an enclosed area and not in a public access area.

The introduction of smoking bans to health facility lands and schools lands as well as the surrounding 5ms of public access land did not include the requirement for signage. To be consistent, signage should either not be required for government building or required for health services and schools. For the purpose of education of the public and promotion of Governments strong no smoking stance it is recommended that signage be mandatory. Consideration should be given to signage defining boundaries from which smoking is not permitted.

It is not clear who will be responsible for making the determination of which buildings are government buildings or not and who will be responsible for ensuring any signage is present.

All references in the amendment refer to Government, and therefore the State Government as clarified by the Act Interpretations Act 1954. Consideration could be given to extending the provisions to Local Government building (Council offices, libraries, sporting complexes etc). Administration of which could be undertaken by Local Government including the provision of signage to Local Government building.

Will this provision apply to government building at all times, including when the building is not open for business (afterhours or weekends). ? This consideration may also be relevant to recent amendments involving smoking within 5m of school and health services land.

26ZGH No smoking signs at particular government buildings

(1) A public sector unit responsible for the maintenance of a building to which section 26ZGG applies must ensure a no smoking sign is displayed—

- (a) at each public entrance to the building; and
- (b) at a place on each side and floor of the building that a member of the public may walk past.

(2) In this section—

no smoking sign means a sign indicating that smoking is not permitted.

The amendments require a public sector unit responsible for maintenance of the particular government building to ensure signs are located both at a public entrance and at a place on each side and floor of the building that a member of the public may walk past. The amendment does require the signs to be visible from any part of the government building. As such a person identified as smoking within 5m of building but not within sight of a public entrance (walking down the side of government building on the footpath) still commits any offence.

Furthermore who is responsible for ensuring signage when a public sector unit is not responsible for the maintenance of a building. (eg- it is leased and all maintenances undertaken by contract staff to the real estate agent)

Clause 6 - Replacement of s 26ZI (Person must not smoke at a prescribed outdoor swimming area)

Section 26ZI—

omit, insert—

26ZI Person must not smoke at public swimming pool

(1) A person must not smoke at a public swimming pool or its associated area.
Maximum penalty—20 penalty units.

(2) In this section—

associated area, for a public swimming pool, means any of the following—

- (a) an area rising from within the pool or a platform over the pool;
- (b) an area providing access to the water in the pool;
- (c) an area adjacent to the pool provided for persons to observe swimmers in the pool;
- (d) an area containing diving boards or water slides for the pool;
- (e) an artificial beach adjacent to the pool;
- (f) if the area surrounding the pool is enclosed by a fence or wall—the area enclosed by the fence or wall.

public swimming pool means a pool or other body of water that is open to the public for swimming, whether or not on payment of money.

In its current form the definition of public swimming pool encompasses all natural and man made bodies of water that the public have access to. For example any part of a beach, lake, dam, creek or river. The term “other body of water” may need to be tightened unless the intent is to prohibit smoking within any associated areas of all bodies of water.

Clarification may also be required in relation to swimming pools that are only available to guests or members and not to the public. For example a pool at a hotel which is only available to guest or a pool at a gym that is only available to members.

Clause 7 - Insertion of new ss 26ZKA–26ZKC

Part 2C, division 3—

insert—

26ZKA Person must not smoke at outdoor pedestrian mall

(1) A person must not smoke at an outdoor pedestrian mall.
Maximum penalty—20 penalty units.

(2) In this section—

outdoor pedestrian mall means each of the following—

- (a) a mall established under the *City of Brisbane Act 2010*, section 88 or the *Local Government Act 2009*, section 80A;
- (b) the Chinatown Mall and Valley Mall established under the repealed *Local Government (Chinatown and The Valley Malls) Act 1984*;
- (c) the Queen Street Mall established under the repealed *Local Government (Queen Street Mall) Act 1981*.

Will there be a requirement for any signage to advise when smoking is not permitted. For example, identifying when the mall starts and finishes. Further, how will smokers know that smoking is not permitted at a particular mall?

In its current form malls that are located on private property are not covered by section 26KA. Having some malls permissible for smoking and some not will be confusing. Private malls have the potential to be as or even more populated by pedestrian traffic than malls governed by local government. As there is a reasonable excuse provision afforded to persons not remaining at or near an entrance to an enclosed place, the 4m rule is not always effective in private malls. Consideration should be given to including private malls under this division. A private mall may be considered an opened area between two or more sets of building (whether continuous or not) but is located on private property.

26ZKB Person must not smoke at public transport waiting point

(1) A person must not smoke at a public transport waiting point.

Maximum penalty—20 penalty units.

(2) In this section—

ferry service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

public passenger service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

public transport waiting point means any of the following—

- (a) a transit terminal for public passenger services;
- (b) a ferry terminal, jetty, pontoon or landing for ferry services;
- (c) a bus stop, bus shelter, bus station or bus lay-by;
- (d) a taxi rank, limousine rank or limousine standing area.

As with the public swimming pools, the scope of public transport waiting point needs to be clarified. Will it just cover the traditional public transport or will it capture transport offered by business to customers. The definition of provided by the Transport Operations (Passenger Transport) Act does not exclude any private business or the like, so is likely to capture a majority of tourist vessels/ buses etc as well. If this is the intent then clearer guidance needs to be provided in relation to defining exactly what is a public transport waiting point including where they begin and end.

26ZKC Person must not smoke at skate park

(1) A person must not smoke at a skate park.

Maximum penalty—20 penalty units.

(2) A person must not smoke on land within 5m of a skate park.

Maximum penalty—20 penalty units.

(3) Subsection (2) does not apply to—

- (a) a person on land that is not a public place; or
- (b) a person in a motor vehicle passing the skate park.

(4) In this section—

skate park means a part of a public place constructed for the purpose of riding a skateboard around or over obstacles and uneven surfaces.

Considering a majority of skate parks would be located on local government land, there may be significant difficulty in knowing the boundary of land that contains a skate park. Clearer parameters are required. Alternatively the Act does provide a definition for a children's playground. A skate park could be interpreted as a children's playground and therefore smoking within 10m is already prohibited under section 26ZK. It is recommended that a definition for children's playground be developed to assist in the administration of this provision.

Again the provision of signage should be considered with the owners of the playground responsible for it's supply.

Clause 8 - Amendment of s 26ZJ (Person must not smoke near an entrance to an enclosed place)

Section 26ZJ(3)—

omit, insert—

(3) Subsection (1) does not apply to a person in a motor vehicle.

Clause 9 - Amendment of s 26ZL (Person smoking must stop when directed)

Section 26ZL, '26ZJ(1) or 26ZK(1)'—

omit, insert—

26ZJ(1), 26ZK(1), 26ZKA(1), 26ZKB(1) or 26ZKC(1) or (2)

Clause 10 - Amendment of s 26ZN (Role of local government)

(1) Section 26ZN, 'prescribed outdoor swimming area'—

omit, insert—

public swimming pool

(2) Section 26ZN—

insert—

(2) In this section—

public swimming pool see section 26ZI(2).

Consideration should be given to extending Local Government responsibilities to include smoking within 5m of school/ health service, Smoking near government Building, smoking at transport waiting points and smoking within 10 of a children's playground. This would also include local government buildings if section 26ZGH is amended to include local government buildings.

Section 26ZM(2) should be either removed or amended to ensure local government responsibilities are administered by local government.

Other areas of consideration

Smoking next to an outdoor or eating drinking place.

At present a smoker is permitted to stand next to an outdoor eating and drinking area and smoke. For patrons, the effects second hand tobacco smoke are the same as if the

smoker was within the dining area. In some cases smokers skirt the legislation by standing outside the dining area and reaching in to grab a drink or a bite. Actions such as this defeat the Acts intent of providing a smoke free environment at places where food is being eaten and provides considerable nuisance to others. Consideration should be given to prohibiting smoking within a certain distance from an outdoor eating or drinking place. For consistency a distance of 5m could be employed.

Extended periods within DOSAs

The Act permits both smokers and non smokers to stay within a Designated Outdoor Smoking Area for any period of time. As a result some DOSAs become extremely crowded with smoking and non smoking patrons. Venue staff are required to enter DOSAs to retrieve glasses etc. Both smokers and non smokers are inhaling significantly high levels of second hand smoke which has the obvious health concerns for non smokers and smokers.

Consideration needs to be given to the function of DOSAs and the effect they may be having on the health of staff, non smokers and smokers. Further consideration should also be given to what liability Government may hold in allowing DOSAs to exist contrary to the object of the Act. Section 3 of the Act states the objective as “ to improve the health of members of the public by reducing their exposure to tobacco and other smoking products”.

The removal of permitting drinks into DOSAs would in effect turn DOSAs into smoking areas. Patrons are more unlikely to spend extended periods of time in smoking only area as drinking is not permitted.

Entry to smoking area by children

At present children are permitted to enter a DOSA (providing liquor licence provisions permit it) as well as a smoking only area. Not only are children exposed to the harmful effect of tobacco smoke produced by their guardians but by other smokers as well.

Consideration should be given to restricting access to smoking areas further supporting current restrictions on smoking in a vehicle with a person under 16 present.

Display of Ice pipes or bongs

At present there is considerable confusion over what is an ice pipe and what is a bong. Retailers are skirting the current provisions as a result of unclear interpretations.

The defence used by retailers is that the products are used for the smoking of tobacco, similar to the old fashion tobacco pipe. To circumvent this, changes to the Act could be made to make it an offence to display or supply an object that promotes the use of a prohibited substance. Prohibited substance could be defined by regulation and would include substances such as “ice” or marijuana. In this way the more traditional tobacco pipe can still be available for sale but the “water pipes, cocktail pourers, or

“lighter glass pipes that can’t get hot to smoke ice” would be considered as item promoting the use of prohibited substances.

Use of the word Tobacconist in advertising

At present it is prohibited to use a smoking product in any form of advertising. However as Tobacconist is not a smoking product, it is can be used to advertise as a place that sell tobacco. For example Jo Bloggs Enterprises – fresh fruit - groceries - tobacconist.

The Act provides an exception for businesses that have tobacconist as part of the business name (Jo Bloggs Tobacconist) however businesses are now using term more as means of advertising what they sell.

In short the Act defines a tobacconist as a business that averages 80% or more gross turn over in tobacco sales. The Act should be amended to make it an offence to state a business is a tobacconist unless they meet the definition provided by the Act.

Furthermore consideration should also be given to the definition of a tobacconist. At present a forensic account may be required to determine what percentage of a business’s gross turnover is attributed to smoking products. A possible solution would be the licensing of tobacconists with a requirement for proof of 80% sale contributed to smoking products.

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